

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Mary Rose Nichols,

Petitioner-Appellant,

v.

Dickinson County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-30-0702
Parcel No. 07-29-353-003**

On January 13, 2010, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, Mary Rose Nichols, requested a hearing and submitted evidence in support of her petition. She was represented by Gene McCoy. The Dickinson County Board of Review designated Assistant County Attorney Lonnie Saunders as its legal representative. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Mary Nichols is an owner of a residentially classified property located at 300 Helms Drive, Arnolds Park, Iowa. The property consists of a 1.093 acre site improved with a single-family residence built in 1911, containing 950 total square feet of living area and no basement. Additional improvements include a small shed and a boat house. The site is an irregular-shaped, peninsula-type lot with lake-shore frontage on three sides. The site has an estimated 700 feet of lake-shore front. The property has a January 1, 2009, assessment of \$697,500 representing \$656,300 in the land value and \$41,200 in the improvement value.

Nichols protested to the Dickinson County Board of Review regarding the 2009 assessment for this parcel. Gene McCoy (Gene) represented Nichols in the protest to the Board of Review and submitted a letter of protest dated April 26, 2009. The plain language of this protest was based on the ground assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), stating that the property had a total value between \$373,800 to \$488,000. The Board denied this protest.

Nichols then appealed to this Board, reasserting her claim and plainly stating that the property is assessed for more than the value authorized by law. Nichols' written notice to the Appeal Board claims a total range in value from \$415,300 to \$529,000; and seeks total relief from \$168,000 to \$282,200.

Andy McCoy (Andy) and Gene McCoy (Gene) both testified on behalf of Nichols. Andy outlined three primary positions held by the appellant, whom contends there are: "(1) no conforming building lots on the [subject] property, (2) the [subject] property is at high risk for flood damage, and (3) any potential development of the [subject] property would have a costly permitting process to go through and no guarantee that development permits would be issued." Exhibit One offered by Nichols states a belief that the total value of the subject property is \$369,350 representing \$328,150 in land value and \$41,200 in improvement value. This Board notes that the total value asserted is less than that claimed on the protest form to either the Board of Review or this Board.

Andy testified to Exhibits 1-7, which included graphs of a 500-year flood event; flood elevations and durations; aerials; and other photographs of the dwelling and subject site. The appellant argues the County is incorrect when asserting the subject site could be subdivided into two large lots or possibly three average-size building lots. Andy contends there are no conforming building lots on the subject property. He asserts this position based upon the City of Arnolds Park building code guidelines requiring a twenty-five foot set back from the ordinary high water line established by

the Department of Natural Resources (DNR). Andy testified that he had not spoken with anyone from the City of Arnolds Park in relation to future potential subdivision of the subject site. His assertion that the site could not be subdivided, or that if the existing improvements were destroyed – could not be rebuilt, has not been supported with any written or oral documentation.

Nichols did not provide any documentation, support for or an opinion of market value for the subject property. When asked what the value of the property should be, Gene testified for Nichols. On her behalf, he stated he did not know what the site was worth. No appraisals or other testimony was provided by Nichols.

Lonnie Saunders, representing the Dickinson County Board of Review, cites *Shine v. State*, 458 N.W. 2d 864 (Iowa Ct. App. 1990) which differentiates between the term *ordinary high-water* line and *high-water* line. The latter of which is used within the zoning definitions by the City of Arnolds Park. The Board of Review contends the appellant is using the incorrect line for her calculations.

Patricia Dodds, Dickinson County Assessor, testified on behalf of the Board of Review. She testified to conversations with Ron Walker, City Administrator for the City of Arnolds Park. Paraphrasing the conversation with Mr. Walker, Ms. Dodd states that the City has been “good about granting variances to build in Arnolds Park;” and that they (the City) encourage new development. There was no direct testimony from Mr. Walker, nor any specific commentary about the subject site attributed directly to Mr. Walker. Dodds ‘conversations with Mr. Walker, and the desirability of the subject site led her to the reconciliation that the feasibility of future development was plausible and reasonable. While Ms. Dodds’ testimony was at times agitated, it was forthright and considered to be credible.

Ms. Dodds explained how she determined the value of the land, and because of the unique size, shape, and location of the site, how it was done differently than “typical” lots within Arnolds Park. Most lakefront lots are assessed on a front-foot basis, however, the subject site was assessed on a

square-foot basis. This is similar to the method used for other similar size and situated sites in the assessment jurisdiction, albeit on different lakes.

Based upon the foregoing, the Appeal Board finds that insufficient evidence has been submitted by Nichols to establish the fair market value of the subject property; or to support a claim that the subject property is assessed at greater than market value.

Conclusions of Law

The Appeal Board applied the following law:

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).


In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).


In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Nichols does not provide this Board with evidence that the current assessed valuation is more than authorized by law by failing to provide substantial evidence of its fair market value.

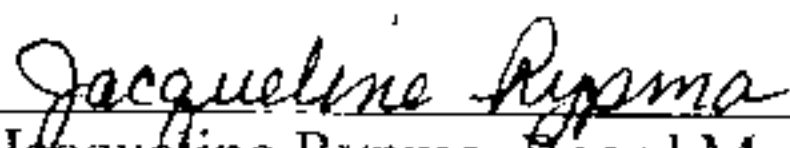
In the opinion of the Appeal Board, Nichols did not show what the value should be as a whole; and the evidence does not support the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. We, therefore, affirm the assessment of the subject property located at 300 Helms Dr., Arnolds Park, Iowa, as determined by the Dickinson County Board of Review as of January 1, 2009.

THE APPEAL BOARD ORDERS the assessment of the Mary Rose Nichols property, located at 300 Helms Drive, Arnolds Park, Iowa, as of January 1, 2009, set by the Dickinson County Board of Review, is affirmed.

Dated this 25 day of February, 2010


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

Mary Rose Nichols
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APPELLANT

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ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>2-25</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	